

OGC HAS REVIEWED.

Executive for AAM

8 September 1948

General Counsel

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Proposed Mess Facilities for [REDACTED]

1. I have indicated my nonconcurrence to the recommendations of the Chief, Services Branch on the above subject, on page 4 of his memorandum of 30 July 1948. The reasons for this nonconcurrence are set forth below in considerable detail, as apparently there have been misunderstandings and confusion in connection with this problem.

2. We believe that the basic confusion was created by the wording of the Act cited by the Chief, Services as authority for his proposal (5 U.S.C.A. 75a, Section 3 of the Act of 5 March 1928, 45 Stat. 193). For clarity, these provisions are set forth in full here again:

"The head of an executive department or independent establishment, where, in his judgment, conditions of employment require it, may continue to furnish civilians employed in the field service with quarters, heat, light, household equipment, subsistence, and laundry services; and appropriations for the fiscal year 1928 and thereafter of the character heretofore used for such purposes are hereby made available therefor: Provided, That the reasonable value of such allowances shall be determined and considered as part of the compensation in fixing the salary rate of such civilians."

3. In view of the fact that the purposes for which this law was enacted do not appear clearly from its text, we have gone into the legislative history. Prior to 1928, many of the departments of the Government were furnishing to certain parts of their field services quarters, subsistence, and other benefits, such as medical attendance and special facilities. These were in effect payments in kind to the field employees. Apparently, Congress felt that this was an unfair differentiation between field and departmental employees, as it conferred an actual material gain to the field employees which could be measured in terms of money. The theory was therefore evolved that the measurable advantage should be considered as part of the salaries of field employees so as to reduce the

amount paid in cash. These salaries were, however, established by law and could not be altered by administrative action within the departments. Consequently, annual appropriations were made for the several field installations concerned for the payment of salaries and expenses, and these annual appropriations contained specific authority to adjust the salaries involved, taking into consideration the value of the payments in kind. By 1928, this had apparently become a routine annual enactment, and it appears that Congress decided to make it permanent legislation.

4. We can only conclude, therefore, that the Act of 5 March 1928 (5 U.S.C.A. 75a) was intended to give permanent authority to heads of departments to adjust field salaries where payments in kind were involved and does not, in itself, authorize expenditures for maintenance of Government quarters, mess services, etc. This conclusion is bolstered by the fact that payments for the facilities or subsistence were made out of specific appropriations or working funds established by law for that purpose and not under the authority of the Act of 5 March 1928. As stated by the Comptroller General (8 C.G. 628 at page 630):

"The portion of the compensation paid in cash is charged to the salary appropriation, and the determined value of the allowances, including any items of upkeep, maintenance, etc., is chargeable to appropriations expressly provided for that purpose."

Also quoted in that opinion is language from another decision, A-19824 of 15 September 1927:

"With respect to employees who are paid compensation partly by receiving allowances in kind, only the cash part of the compensation is chargeable to the salary appropriation, the net value of the allowances furnished in kind having already been charged to the proper appropriation available for producing same, in this case 'Medical and hospital service.' This is the correct procedure regardless of whether the appointment or contract of employment does or does not specifically provide that the allowances are to be furnished in kind."

5. We have at no time requested or received any appropriated funds for the purpose of running a mess or paying mess attendants, and 5 U.S.C.A. 75a restricts

itself to situations where there are funds appropriated for such specific purposes. Hence, the amount by which an employee's salary is reduced is an incidental issue which will arise only if we are concerned in the future with the operation of quarters or subsistence from funds given us for that purpose. In our opinion, therefore, there is at present no authority for CIA to make expenditures for the type of activity proposed for the [REDACTED]

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